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**REMARKS**

Claims 15, 28, 31, and 32 are currently being amended to further particularly point out and distinctly claim the subject matter that Applicant regards as the inventive subject matter, while claim 30 is being amended to fix an unintentional typographical error.

The current amendments do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, the Examiner is respectfully requested to enter the amendments.

**1. Rejection of Claims 15-32 Under 35 U.S.C. §102(f)**

The Office Action states,

Claims 15-32 are rejected under 35 U.S.C. 102(f) because inventive entity of two conflicting inventions (Applicant and U.S. Patent No. 6,743,864) do not share common inventor and claimed subject matter of both inventions are substantially same and not patentably distinct.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned inventions, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102 (f) or (g), or 35 U.S.C. 102(e) for applications pending on

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or after December 10, 2004.

#### RESPONSE

Applicant respectfully traverses the rejection of claims 15-32. In particular, Applicant responds to the current rejection as follows.

The current Office Action states, in part,

Claims 15-32 are rejected under 35 U.S.C. 102(f) because inventive entity of two conflicting inventions (Applicant and U.S. Patent No. 6,743,864) do not share common inventor and claimed subject matter of both inventions are substantially same and not patentably distinct. (Emphasis added).

With respect to the above-captioned portion of the current rejection, as previously discussed in Applicant's response filed July 28, 2006, the previously pending claims were not anticipated by U.S. Patent 6,743,864 (herein referred to as "Glogovsky, et al.") given the previously pending claims recited, in part, "(B) from 60 to 85% by weight of an elastomeric fraction comprising: (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g." See page 5, lines 1-4, and page 9, lines 11-13, of Applicant's response filed July 28, 2006.

In fact, as outlined previously in Applicant's response of July

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28, 2006, Glogovsky, et al. discloses a completely different polyolefin composition in which the disclosed elastomeric fraction (i.e., component (B)) comprises, "(1) a copolymer of propylene with ethylene containing about 20 to about 35% by weight ethylene, and having solubility in xylene at room temperature greater than about 70% by weight, the intrinsic viscosity of the xylene soluble fraction being higher than about 3.0 dl/g up to about 6.0 dl/g" with the intrinsic viscosity of component (B)(1) being preferably from about 3.5 to 5.0 dl/g, and even more preferably from about 4.0 to about 4.5 dl/g. See col. 4, line 62 - col. 5, line 3, in Glogovsky, et al.

Accordingly, the (B)(1) component in Glogovsky, et al. comprises a much higher intrinsic viscosity range than what is currently claimed by Applicant. For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (Emphasis added). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (Emphasis added). The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Notwithstanding, Applicant has currently amended component (B)

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in pending claim 15 to recite, in part, "(B) from 60 to 85% by weight of an elastomeric fraction comprising: (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g; . . . ."

Accordingly, Applicant respectfully believes the currently claimed polyolefin composition, process for preparing the polyolefin composition, film, sheet, or mixture thereof comprising the currently claimed polyolefin composition, and cast film comprising the currently claimed polyolefin composition are not anticipated by Glogovsky, et al.

In addition to the arguments *supra*, Applicant respectfully traverses the rejection of claims 15-32 as being anticipated by Glogovsky, et al. given the Examiner's concession with respect to Glogovsky, et al. on page 3, lines 8-9, and page 4, lines 2-4, of the currently pending Office Action.

In particular, the Examiner concedes on page 3, line 8-9 of the currently pending Office Action, "Composition claimed by Applicant is obvious modification of composition discloses by Glogovsky (U.S. 6,743,864). . . .". Additionally, on page 4, lines 2-4 of the currently pending Office Action states, ". . . ( Applicant and U.S. Patent No. 6,743,864). . . are substantially same. . . ."

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Accordingly, Applicant respectfully contends since the Examiner concedes his belief that Glogovsky, et al. merely discloses compositions that are obvious with respect to Applicant's currently claimed compositions, and that the Examiner believes the subject matter of Glogovsky, et al. is merely substantially the same, and not the same subject matter (i.e., identical), Glogovsky, et al. clearly cannot anticipate the currently pending claims under 35 U.S.C. § 102. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (Emphasis added).

Applicant responds as follows to the rest of the previously outlined portion of the Office Action, which states,

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned inventions, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102 (f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

With respect to the Examiner's statement that the U.S. Patent

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and Trademark Office normally will not institute an interference between applications, or a patent and an application of common ownership, Applicant respectfully contends that an interference with respect to Glogovsky, et al. would be improper in this application, with the reasons being outlined below.

First, the currently pending Office Action states the current rejection is a 35 U.S.C. 102(f) rejection, not a 35 U.S.C. 102(g) rejection. Interference practice is associated with 35 U.S.C. 102(g), not 35 U.S.C. 102(f), and as such would not be proper. See MPEP § 2301.01.

Additionally, for an interference to be properly declared, at least one claim of the current application would have to define the "same invention" as an interfering application and/or patent. (See MPEP § 2301.03) As outlined supra, the currently pending claims are in fact not the same, and are patentably distinct.

Accordingly, Applicant respectfully believes that it would be improper to initiate an interference between the currently pending application and Glogovsky, et al.

As for the Examiner comments regarding common ownership, Applicant previously acknowledged that the current application and Glogovsky, et al. are commonly owned, and Applicant was subjected to an obligation of assignment to the owner of Glogovsky, et al. at the time the claimed subject matter was made. See page 10, lines 2-9, of the response filed by Applicant on July 28, 2006.

In light of the above, claims 15-32 are therefore believed to

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be patentable over Glogovsky, et al. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

## 2. Double Patenting Rejection

The Office Action states,

Claims 15-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of Glogovsky ( U.S. Patent No. 6,743,864).

Although the conflicting claims are not identical, they are not patentably distinct from each other because Applicant claimed essentially same polyolefin composition and same method of polymerization for producing this composition and even same application field - films and sheets produced from this composition by extrusion.

Composition claimed by Applicant is obvious modification of composition disclosed by Glogovsky (U.S. 6,743,864): Component A in Applicant's Claim 1 is identical to Component A disclosed by Glogovsky and used in same range in composition; Component B(1) is identical in composition and ethylene content, fully encompasses criteria of solubility in xylene ( greater than 45% per Applicant and more than 70% by Glogovsky) and overlapping in viscosity of soluble fraction at 3.0 dl/g; Component B(2) is identical in composition, overlap in solubility( Applicant claimed solubility greater than 35% follow disclosed by Glogovsky preferable range greater than about 30% ( see column 5, line 10 - 15)); ratios between B(1) and B(2) is also identical.

## **RESPONSE**

Applicant respectfully traverses the rejection of claims 15-32.

The doctrine of double patenting seeks to prevent the unjustified extension of patent exclusivity beyond the term of a patent. The public policy behind this doctrine is that:

The public should. . . be able to act on the assumption that upon the expiration of the patent it will be free to use not only the invention claimed in the patent but also

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modifications or variants which would have been obvious to those of ordinary skill in the art at the time the invention was made, taking into account the skill in the art and prior art other than the invention claim in the issued patent.

*In re Zickendraht*, 319 F.2d 225, 232, 138 USPQ 22, 27 (CCPA 1963) (Rich, J., concurring).

When a double patenting rejection is appropriate, it must be based either on statutory grounds or nonstatutory grounds. The ground of rejection employed depends upon the relationship of the inventions being claimed. Generally, a double patenting rejection is not permitted where the claimed subject matter is presented in a divisional application as a result of a restriction requirement made in a parent application under 35 U.S.C. 121.

Where the claims of an application are substantively the same as those of a first patent, they are barred under 35 U.S.C. 101 - the statutory basis for a double patenting rejection. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ...." Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957). Where the claims of an application are not the "same" as those of a first patent, but the grant of a patent with



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the claims in the application would unjustly extend the rights granted by the first patent, a double patenting rejection under nonstatutory grounds is proper.

In determining whether a proper basis exists to enter a double patenting rejection, the examiner must determine the following:

(A) Whether a double patenting rejection is prohibited by the third sentence of 35 U.S.C. 121 (see MPEP § 804.01; if such a prohibition applies, a double patenting rejection cannot be made);

(B) Whether a statutory basis exists; and

(C) Whether a nonstatutory basis exists.

Domination and double patenting should not be confused. They are two separate issues. One patent or application "dominates" a second patent or application when the first patent or application has a broad or generic claim which fully encompasses or reads on an invention defined in a narrower or more specific claim in another patent or application. Domination by itself, i.e., in the absence of statutory or nonstatutory double patenting grounds, cannot support a double patenting rejection. *In re Kaplan*, 789 F.2d 1574, 1577-78, 229 USPQ 678, 681 (Fed. Cir. 1986); and *In re Sarrett*, 327 F.2d 1005, 1014-15, 140 USPQ 474, 482 (CCPA 1964). See MPEP § 804 II.

A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the

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reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); and *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985).

In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is - does any claim in the application define an invention that is anticipated by, or is merely an obvious variation of, an invention claimed in the patent? If the answer is yes, then an "obviousness-type" nonstatutory double patenting rejection may be appropriate. Obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is not patentably distinct from the subject matter claimed in a commonly owned patent, or a non-commonly owned patent but subject to a joint research agreement as set forth in 35 U.S.C. 103(c)(2) and (3), when the issuance of a second patent would provide unjustified extension of the term of the right to exclude granted by a patent. See *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 58 USPQ2d 1869 (Fed. Cir. 2001); *Ex parte Davis*, 56 USPQ2d 1434, 1435-36 (Bd. Pat. App. & Inter. 2000).

Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

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U.S.C. 103 are employed when making an obvious-type double patenting analysis. These factual inquiries are summarized as follows:

- (A) Determine the scope and content of a patent claim relative to a claim in the application at issue;
- (B) Determine the differences between the scope and content of the patent claim as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of nonobviousness.

The conclusion of obviousness-type double patenting is made in light of these factual determinations.

Additionally, any obviousness-type double patenting rejection should make clear:

- (A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the patent.

Moreover, when considering whether the invention defined in a claim of an application would have been an obvious variation of the invention defined in the claim of a patent, the disclosure of the

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patent may not be used as prior art. (Emphasis added) *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992).

With respect to the current rejection, currently pending claims 15-27 are directed towards a polyolefin composition; claims 28-30 are directed towards a process; claim 31 is directed towards a film, sheet, or mixture thereof; and claim 32 is directed towards a cast film. All currently pending claims (i.e., claims 15-27) are submitted herewith as Attachment A.

With respect to Glogovsky, et al., claims 1-10 are directed towards a polyolefin composition; claims 11-12 are directed towards a process; claim 13 is directed towards sheets; and claim 14 is directed towards a single ply roofing sheet.

Currently pending claims 1-10:

Claim 15 of the current application recites,

A polyolefin composition comprising:

(A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula  $H_2C=CHR^1$ , where  $R^1$  is H or a  $C_{2-8}$  linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;

(B) from 60 to 85% by weight of an elastomeric fraction comprising:

(1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer

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comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g; and

(2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula  $H_2C=CHR^2$ , where  $R^2$  is a  $C_{2-8}$  linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature greater than 35% by weight, and a xylene soluble fraction of the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g;

wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1.

Applicant believes none of claims 1-14 in Glogovsky, et al. recite the same, or an obvious variant, of currently pending claim 15.

Additionally, Applicant traverses the current rejection since the Examiner has not made clear: (A) the differences between the inventions defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the patent. See MPEP §804 (1).

In particular, Applicant believes the Examiner has not properly compared the currently pending claims in the above-captioned application to the allowed claims in Glogovsky, et al., and outlined: (A) the differences between the inventions defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the currently rejected claims are anticipated by, or would have been an

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obvious variation of, the invention defined in a claim or claims in the cited patent. See MPEP §804 (1).

In fact, as outlined *supra*, Applicant is currently claiming, in part, a polyolefin composition comprising (B) from 60 to 85% by weight of an elastomeric fraction comprising: (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g, whereas Glogovsky, et al. claims, in part, a polyolefin composition comprising (B) from about 60 to about 85% by weight of an elastomeric fraction comprising 1) a copolymer of propylene with ethylene, optionally containing about 0.5 to 5% by weight of a diene, containing from about 20 to about 35% by weight ethylene and having solubility in xylene at room temperature greater than about 70% by weight, the intrinsic viscosity of the xylene soluble fraction being higher than about 3.0 dl/g up to about 6.0 dl/g.

Accordingly, clearly Applicant is claiming a different polyolefin composition than what Glogovsky, et al. claims.

Moreover, as demonstrated in Table 2 of Applicant's specification, the currently claimed polyolefin compositions comprise different properties, including a higher melt flow rate (MFR), a lower intrinsic viscosity (I.V.) solubility in xylene, a

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lower tensile strength at break, and relatively higher elongations at break than the compositions disclosed in Glogovsky, et al. See Table 2 in Applicant's specification versus Table 2 in Glogovsky, et al.

Accordingly, Applicant's currently claimed polyolefin compositions are clearly not obvious variants of those claimed in Glogovsky, et al.

Currently pending claims 16-27 depend directly or indirectly from currently pending claim 15, and necessarily include all of the limitations therein. As such, Applicant believes claims 15-27 are patentably distinct from claims 1-14 in Glogovsky, et al.

Currently pending claims 28-30:

Claim 28 of the current application recites,

A process for preparing a polyolefin composition comprising:

(A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula  $H_2C=CHR^1$ , where  $R^1$  is H or a  $C_{2-8}$  linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;

(B) from 60 to 85% by weight of an elastomeric fraction comprising:

(1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g; and

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(2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula  $H_2C=CHR^2$ , where  $R^2$  is a  $C_{2-8}$  linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature greater than 35% by weight, and a xylene soluble fraction of the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g;

wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1, and the process comprises at least three sequential polymerization stages with each subsequent polymerization stage being conducted in presence of a polymeric material formed in a immediately preceding polymerization reaction, wherein the crystalline propylene copolymer is prepared in at least one first stage and the elastomer fraction is prepared in at least two sequential stages, wherein the at least three sequential polymerization stages are carried out in presence of a catalyst comprising a trialkylaluminum compound and a solid catalyst component comprising a halide or halogen-alcoholate of Ti and an electron-donor compound supported on anhydrous magnesium chloride, the solid catalyst component comprising a surface area (measured by BET) of less than 200  $m^2/g$ , and a porosity (measured by BET) greater than 0.2 ml/g.

Applicant believes none of claims 1-14 in Glogovsky, et al. recite the same, or an obvious variant, of currently pending claim 28.

Additionally, Applicant traverses the current rejection since the Examiner has not made clear: (A) the differences between the inventions defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the patent. See MPEP §804 (1).



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In particular, Applicant believes the Examiner has not properly compared the currently pending claims in the above-captioned application to the allowed claims in Glogovsky, et al., and outlined: (A) the differences between the inventions defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the invention defined in a claim or claims in the cited patent. See MPEP §804 (1).

In fact, as outlined *supra*, Applicant is currently claiming, in part, a process for preparing a polyolefin composition comprising (B) from 60 to 85% by weight of an elastomeric fraction comprising: (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g, whereas Glogovsky, et al. claims, in part, a process for preparation of a polyolefin composition comprising (B) from about 60 to about 85% by weight of an elastomeric fraction comprising 1) a copolymer of propylene with ethylene, optionally containing about 0.5 to 5% by weight of a diene, containing from about 20 to about 35% by weight ethylene and having solubility in xylene at room temperature greater than about 70% by weight, the intrinsic viscosity of the xylene soluble

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fraction being higher than about 3.0 dl/g up to about 6.0 dl/g.

Accordingly, Applicant clearly claims a different process than what Glogovsky, et al. claims.

Moreover, as demonstrated in Table 2 of Applicant's specification, the currently claimed process produces a polyolefin compositions comprising different properties, including a higher melt flow rate (MFR), a lower intrinsic viscosity (I.V.) solubility in xylene, a lower tensile strength at break, and relatively higher elongations at break than the compositions disclosed in Glogovsky, et al. See Table 2 in Applicant's specification versus Table 2 in Glogovsky, et al.

Accordingly, Applicant's currently claimed process is clearly not an obvious variant of the process claimed in Glogovsky, et al.

Currently pending claims 29-30 depend directly or indirectly from currently pending claim 28, and necessarily include all of the limitations therein. As such, Applicant believes claims 28-30 are patentably distinct from claims 1-14 in Glogovsky, et al.

Currently pending claim 31:

Claim 31 of the current application recites,

A film, sheet, or mixture thereof comprising a polyolefin composition comprising:

(A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula  $H_2C=CHR^1$ , where  $R^1$  is H or a  $C_{2-8}$  linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;

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(B) from 60 to 85% by weight of an elastomeric fraction comprising:

(1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g; and

(2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula  $H_2C=CHR^2$ , where  $R^2$  is a  $C_{2-8}$  linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature greater than 35% by weight, and a xylene soluble fraction of the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g;

wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1.

Applicant believes none of claims 1-14 in Glogovsky, et al. recite the same, or an obvious variant, of currently pending claim 31.

Additionally, Applicant traverses the current rejection since the Examiner has not made clear: (A) the differences between the inventions defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the patent. See MPEP §804 (1).

In particular, Applicant believes the Examiner has not properly compared the currently pending claims in the above-captioned

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application to the allowed claims in Glogovsky, et al., and outlined: (A) the differences between the inventions defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the invention defined in a claim or claims in the cited patent. See MPEP §804 (1).

In fact, as outlined *supra*, Applicant is currently claiming, in part, a film, sheet, or mixture thereof comprising a polyolefin composition comprising (B) from 60 to 85% by weight of an elastomeric fraction comprising: (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g, whereas Glogovsky, et al. claims, in part, a polyolefin composition comprising (B) from about 60 to about 85% by weight of an elastomeric fraction comprising 1) a copolymer of propylene with ethylene, optionally containing about 0.5 to 5% by weight of a diene, containing from about 20 to about 35% by weight ethylene and having solubility in xylene at room temperature greater than about 70% by weight, the intrinsic viscosity of the xylene soluble fraction being higher than about 3.0 dl/g up to about 6.0 dl/g.

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Accordingly, clearly Applicant is claiming a different film, sheet, or mixture thereof than what Glogovsky, et al. claims.

Moreover, as demonstrated in Table 2 of Applicant's specification, the currently claimed polyolefin compositions comprise different properties, including a higher melt flow rate (MFR), a lower intrinsic viscosity (I.V.) solubility in xylene, a lower tensile strength at break, and relatively higher elongations at break than the compositions disclosed in Glogovsky, et al. See Table 2 in Applicant's specification versus Table 2 in Glogovsky, et al.

Accordingly, Applicant's currently claimed film, sheet, or mixture thereof are clearly not obvious variants of those claimed in Glogovsky, et al.

As such, Applicant believes claim 31 is patentably distinct from claims 1-14 in Glogovsky, et al.

Currently pending claim 32:

Claim 32 of the current application recites,

A cast film comprising a polyolefin composition comprising:

(A) from 15 to 40% by weight of a crystalline propylene copolymer comprising at least 90% by weight of propylene and at least one alpha-olefin of formula  $H_2C=CHR^1$ , where  $R^1$  is H or a  $C_{2-8}$  linear or branched alkyl, the crystalline propylene copolymer comprising a solubility in xylene at room temperature lower than 15% by weight;

(B) from 60 to 85% by weight of an elastomeric fraction comprising:

(1) a propylene and ethylene copolymer comprising from 20

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to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g; and

(2) an ethylene copolymer comprising 15 to 40% by weight of at least one alpha-olefin of formula  $H_2C=CHR^2$ , where  $R^2$  is a  $C_{2-8}$  linear or branched alkyl, the ethylene copolymer comprising a solubility in xylene at room temperature greater than 35% by weight, and a xylene soluble fraction of the ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.0 to 3.0 dl/g;

wherein a weight ratio of B(1) to B(2) ranges from 1:5 to 5:1.

Applicant believes none of claims 1-14 in Glogovsky, et al. recite the same, or an obvious variant, of currently pending claim 32.

Additionally, Applicant traverses the current rejection since the Examiner has not made clear: (A) the differences between the inventions defined by the conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue is anticipated by, or would have been an obvious variation of, the invention defined in a claim in the patent. See MPEP §804 (1).

In particular, Applicant believes the Examiner has not properly compared the currently pending claims in the above-captioned application to the allowed claims in Glogovsky, et al., and outlined: (A) the differences between the inventions defined by the

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conflicting claims; and (B) the reasons why a person of ordinary skill in the art would conclude that the invention defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the invention defined in a claim or claims in the cited patent. See MPEP §804 (1).

In fact, as outlined supra, Applicant is currently claiming, in part, a cast film comprising a polyolefin composition comprising (B) from 60 to 85% by weight of an elastomeric fraction comprising: (1) a propylene and ethylene copolymer comprising from 20 to 35% by weight of ethylene, the propylene and ethylene copolymer comprising a solubility in xylene at room temperature greater than 45% by weight, and a xylene soluble fraction of the propylene and ethylene copolymer comprising an intrinsic viscosity in tetrahydronaphthalene at 135°C ranging from 1.5 to 2.5 dl/g, whereas Glogovsky, et al. claims, in part, a polyolefin composition comprising (B) from about 60 to about 85% by weight of an elastomeric fraction comprising 1) a copolymer of propylene with ethylene, optionally containing about 0.5 to 5% by weight of a diene, containing from about 20 to about 35% by weight ethylene and having solubility in xylene at room temperature greater than about 70% by weight, the intrinsic viscosity of the xylene soluble fraction being higher than about 3.0 dl/g up to about 6.0 dl/g.

Accordingly, clearly Applicant is claiming a different article than what Glogovsky, et al. claims.

Moreover, as demonstrated in Table 2 of Applicant's

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specification, the currently claimed polyolefin compositions comprise different properties, including a higher melt flow rate (MFR), a lower intrinsic viscosity (I.V.) solubility in xylene, a lower tensile strength at break, and relatively higher elongations at break than the compositions disclosed in Glogovsky, et al. See Table 2 in Applicant's specification versus Table 2 in Glogovsky, et al.

Accordingly, Applicant's currently claimed cast film is clearly not an obvious variant of the articles claimed in Glogovsky, et al.

As such, Applicant believes claim 32 is patentably distinct from claims 1-14 in Glogovsky, et al.

In light of the above, Applicant respectfully requests the Examiner to withdraw the currently pending double patenting rejection, and allow claims 15-32.

#### CONCLUSION


Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw the rejections, and allow all pending claims 15-32. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner if any questions or comments arise.



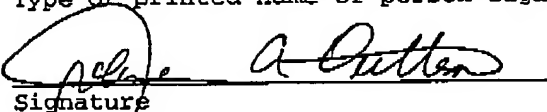
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Respectfully submitted,

By:   
Jarrod N. Raphael  
Registration No. 55,566  
Customer No. 34872

Date: March 16, 2007  
Basell USA Inc.  
912 Appleton Road  
Elkton, MD 21921  
Telephone No.: 410-996-1750  
Fax No.: 410-996-1560

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. 571-273-8300) on March 16, 2007

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